

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATIONS No 25 & 26 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT MAGISTRATE (COLLECTOR)

Versus

MUKHTYARSINHG HAVASINGH CHAUDHARY

Appearance:

Mr B D Desai, APP for Petitioners No. 1-2

MR BC DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/02/2002

ORAL (COMMON) JUDGEMENT

The petitioners above named have preferred these two Revision Applications under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), challenging the order dated 16.10.2001 below applications Exh.11 in Criminal Appeal No.2/2001 and Exh.10 in Criminal Appeal No.3/2001 respectively.

2. It appears from the record that the two tankers with Kerosene were seized by the officers of the Civil Supplies Department and the contesting respondent preferred the above said Criminal Appeals and made Applications Exh.11 and 10 with a request that the said tanker may be released pending disposal of the said appeal. It appears from the order of the learned Addl.Sessions Judge at Surat that the learned Special AGP had unequivocally stated that he had no objection if the trucks which were confiscated by Collector, Surat under the Essential Commodities Act, are released by taking solvent surety.

3. It appears that on the basis of the above consent given by the learned AGP/APP, the tankers were ordered to be released to the contesting respondent by order dated 16.10.2001 on the conditions laid down in the order. Feeling aggrieved by the said order of the learned Addl.Sessions Judge, Surat, the petitioners have preferred these revision applications before this Court. It has been mainly contended that when the appeals were not maintainable before the Sessions Court, no interim order could have been passed by the said Court and, therefore, the order in question is illegal. It is, therefore, prayed that these revisions be allowed and the said orders be quashed and set aside.

4. Rule was issued. Mr BC Dave, learned Advocate has appeared on behalf of the respondents in response to the rule served. I have heard Mr B D Desai, learned APP for the State and Mr B C Dave, learned Advocate for the respondents and have perused the papers.

5. This is a revision application against an interim order for interim custody of the tankers in question. It has been submitted by Mr Desai that kerosene is also there in the said tankers. However, the order does not relate to the release of kerosene to the contesting respondents. The order simply refers to the release of the tankers as described in the order to the respondent. Therefore, when the tankers have been released by the impugned order, then, the kerosene in the tankers is not required to be handed over to the petitioners and therefore, the State will certainly be at liberty to take out kerosene from the said tankers and to preserve it in accordance with law. Even Mr B C Dave, learned Advocate appearing for the respondent does not claim custody of the kerosene and he has no objection if the kerosene is taken away by the petitioners in accordance with law from the said tankers.

6. Another aspect of the case is that it is apparent on the face of record that the learned Addl. Sessions Judge has passed the order with the consent of the learned Advocate appearing for the State before him. Mr B D Desai, learned APP is not in a position to say that the above reference to the consent of the learned Advocate for the State has been wrongly made by the court below in the said order. Therefore, when the order has been passed with the consent of the learned Advocate for the petitioners, it is not open to the petitioners to file these revision applications before this court challenging the said order passed on the consent of the parties. After all this is a revision wherein powers, function and jurisdiction are limited. Even if the order is illegal, it cannot be lightly brushed aside unless serious prejudice is apparent on the face of the record. In the present case, the order has been passed on the consent of the learned advocate for the petitioners before the Sessions court. In that view of the matter, I am of the opinion that this is not a fit case for exercising revisional jurisdiction under section 397 read with section 401 of the said Code. Therefore, these revision applications deserve to be dismissed.

7. In above view of the matter, these two revision applications are ordered to be dismissed. Rule discharged. It is clarified that the kerosene lying in the tankers in question can be taken away by the petitioners in accordance with law by drawing appropriate panchnama in presence of independent witnesses with a view to avoid any dispute about the quantity and quality thereof in future.

8. The appeals pending before the Sessions Court referred to above may be expedited and the learned Advocate for the contesting respondents has assured full cooperation on behalf of the respondents for expeditious disposal of the said appeals.

4.2.2002 [D P Buch, J.]

msp